UNITED
NATIONS

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Security Council

Distr.
GENERAL

S/2000/131
17 February 2000

ORIGINAL: ENGLISH

REPORT OF THE SECRETARY-GENERAL ON THE SITUATION CONCERNING WESTERN SAHARA

I. INTRODUCTION

1. By its resolution 1282 (1999) of 14 December 1999, the Security Council extended the mandate of the United Nations Mission for the Referendum in Western Sahara (MINURSO) until 29 February 2000 in order to complete the identification of voters, issue a second provisional voter list and initiate appeals for tribal groupings H41, H61 and J51/52. The Council requested me to report before the end of the present mandate on prospects for progress in implementing the United Nations settlement plan (S/21360 and S/22464 and Corr.1) within a reasonable period of time, pursuant to the agreements reached between the parties, the Kingdom of Morocco and the Frente Popular para la Liberación de Saguía el-Hamra y de Río de Oro (Frente POLISARIO), under the auspices of my Personal Envoy, James A. Baker III (S/1997/742, annexes I-III), and to the United Nations package of measures (S/1999/483/Add.1).

2. The present report is submitted pursuant to Security Council resolution 1282 (1999). It covers developments since my previous report to the Council, dated 6 December 1999 (S/1999/1219).

II. DEVELOPMENTS DURING THE REPORTING PERIOD

3. My Special Representative, William Eagleton, pursued consultations with the parties in order to seek ways of moving the process forward, in particular with respect to the new round of appeals following the issuance of the second part of the provisional voter list on 17 January (see sect. A below) and to the preparatory work for the repatriation of Saharan refugees. To that end, my Special Representative met with the Moroccan Secretary of State for Foreign Affairs, Taieb Fassi Fihri, at Rabat on 21 December 1999, with Foreign Minister Mohamed Benaissa and Interior Secretary of State Fouad El Himma on 11 January 2000 and again with Mr. Benaissa and Mr. Fassi Fihri on 31 January. He met with Frente POLISARIO Secretary-General Mohamed Abdelaziz and with the Frente POLISARIO Coordinator with MINURSO, Emhamed Khaddad, at Tindouf, Algeria, on 27 January, and again with Mr. Khaddad in New York on 6 February.

4. The Frente POLISARIO continued to express its concern over delays resulting from the large number of appeals expected from the second part of the provisional voter list, in addition to the 79,000 appeals from the first part issued on 15 July 1999. It urged a strict interpretation of the admissibility procedures (S/1999/483/Add.1, pp. 13-14) so as to reduce the time needed to complete the appeal process. For their part, the Moroccan authorities reiterated the right of every applicant to appeal by presenting witnesses who could provide new information to support his or her inclusion in the voter list.

5. Following the release of the second part of the provisional list on 17 January, the Moroccan authorities expressed surprise and dismay at the small number of applicants found to be eligible. They emphasized the importance of an appeal process in which all Saharans rejected by the MINURSO Identification Commission are given the opportunity to restate their case. Moroccan officials questioned again the impartiality and objectivity of Identification Commission members and warned that the referendum would not be held if any person originating from the Sahara were denied the right to participate. At the same time, the Frente POLISARIO warned against any attempt to delay the referendum and called for the speedy implementation of the United Nations settlement plan. Frente POLISARIO officials expressed the view that, if the process is delayed much longer, the presence of MINURSO would become irrelevant and there could be a return to armed hostilities. During consultations with me at Headquarters on 7 February, Mr. Abdelaziz reiterated the concerns of the Frente POLISARIO about the delays in the implementation process.

A. Identification and appeals

6. The identification of individual applicants from the H41, H61 and J51/52 tribal groupings, which began on 15 June 1999, was completed by MINURSO on 30 December as scheduled, with 51,220 interviewed. This brings the number of applicants interviewed since the identification process began in 1994 to an overall total of 198,469. The second round of the appeal process was launched by the Identification Commission on 17 January, when the second part of the provisional list of applicants eligible to vote was communicated by my Special Representative to the two parties. That second part contained the names of 2,135 applicants out of 51,220 interviewed from tribal groupings H41, H61 and J51/52. With the 84,251 eligible applicants whose names are contained in the first part of the provisional voter list issued on 15 July 1999 (out of 147,249 from Saharan tribes other than those three groupings), this brings the number of applicants found eligible to vote to a total of 86,386. In accordance with the MINURSO appeal procedures (S/1999/483/Add.1), all those excluded from the provisional voter list have the right to appeal, while those found eligible can also challenge the inclusion of others.

7. Appeal centres have been opened by MINURSO in the Territory (Boujdour, Dakhla and Laayoune), in the Tindouf area of Algeria (Camp Smara), in Morocco (Assa, Goulimine, Rabat, Tan Tan, Taroudant, Tata and Zagora) and in Mauritania (Nouadhibou and Zouerate) to receive appeals from tribal groupings H41, H61 and J51/52. As at 11 February, 29,690 appeals had been received, with 22,065 applicants having visited the centres, including 3,876 who had access to their identification files and 18,556 who were provided with file transcripts. As was

already the case in the first round of appeals (S/1999/1219, para. 9), most have been filed to date under article 9.1 (iii) of the appeal procedures (S/1998/483/Add.1) by applicants who, on the basis of their interviews, did not meet the eligibility criteria and were therefore excluded from the second part of the provisional voter list. No appeal has yet been filed under article 9.2 of the appeal procedures, challenging another applicant's inclusion in the list.

8. While still engaged in the receipt of appeals from tribal groupings H41, H61 and J51/52, the Identification Commission has almost completed the necessary data-processing and related technical work with respect to the 79,000 appeals received from the first part of the provisional voter list, issued on 15 July 1999.

B. Prisoners of war

9. On 26 January 2000, the Government of Morocco informed the International Committee of the Red Cross (ICRC) in writing that it was prepared to receive all the Moroccan prisoners of war listed in the document presented by the Frente POLISARIO to my Special Representative on 23 November 1999 (see S/1999/1219, para. 12). My Special Representative was subsequently informed by ICRC that it was proceeding with the necessary arrangements in consultation with the parties.

C. Military aspects

10. As at 17 February 2000, the strength of the military component of MINURSO stood at 230, all ranks (see annex). Under the command of General Claude Buze (Belgium), the military component continued to monitor the ceasefire between the Royal Moroccan Army and the Frente POLISARIO forces, which came into effect on 6 September 1991. The MINURSO area of responsibility remained generally calm and there have been no indications that either side intends to resume hostilities in the near future. Progress continued in the implementation of the military agreements between MINURSO and the two parties on the marking and disposal of mines and unexploded ordnance and the related exchange of detailed information. The Frente POLISARIO forces and the Royal Moroccan Army conducted a total of seven operations for the disposal of explosives and ammunition during the reporting period.

D. Civilian police aspects

11. During the reporting period, the civilian police component of MINURSO assisted the Identification Commission at identification centres until the end of December 1999 and has assisted at appeal centres since 17 January 2000. The current strength of the component stands at 81 civilian police officers, who are under the command of the Police Commissioner for MINURSO, Inspector General Om Prakash Rathor (India).

E. Preparatory work for the repatriation of Saharan refugees

12. During the reporting period, the Office of the United Nations High Commissioner for Refugees (UNHCR), in close consultation and coordination with MINURSO, continued its preparatory work for the repatriation of Saharan refugees, as provided for under the United Nations settlement plan. UNHCR consolidated its presence in the mission area by assigning additional personnel to Laayoune and Tindouf.

13. UNHCR completed its pre-registration exercise to ascertain the refugees' willingness to repatriate and to determine their final destinations in the Territory. This brings the number of refugees pre-registered since the exercise was initiated in August 1997 to a total of 107,149. This figure includes only those refugees whose eligibility to vote has been determined by MINURSO and their immediate families. During the exercise, the overwhelming majority consistently expressed their desire to repatriate only to the area of the Territory east of the berm, irrespective of their place of origin in the Territory.

14. Consultations were pursued with the parties by my Special Representative and UNHCR to initiate cross-border confidence-building measures, including family visits, pursuant to Security Council resolution 1282 (1999). However, no progress was made in this regard because the Frente POLISARIO continued to express concerns in the absence of security guarantees in the area of the Territory west of the berm and, although initially welcoming the proposed confidence-building measures, the refugees in the Tindouf camps also remained concerned for their safety and security.

III. ASSESSMENT OF PROGRESS AND PROBLEMS IN THE IMPLEMENTATION PROCESS

15. In its resolution 1282 (1999), the Security Council requested me to report on prospects for progress in implementing the settlement plan within a reasonable period of time. In this context, it may be useful to recall the main provisions of the plan (see S/21360, para. 47). During the transitional period, the United Nations, in cooperation with the Organization of African Unity, is to have sole and exclusive responsibility over the organization and conduct of a referendum in the Territory, to enable the people of Western Sahara to choose freely, without administrative or military constraints, between independence and integration with Morocco. To this end, there is to be a ceasefire followed by an exchange of prisoners of war, a reduction in the number of Moroccan troops in the Territory and confinement of the combatants of both sides to specific locations. In order to ensure that the necessary conditions exist for the holding of a free and fair referendum, the United Nations is to monitor other aspects of the administration of the Territory, especially the maintenance of law and order. Following the proclamation of an amnesty, Saharan political prisoners are to be released. All laws or regulations that might impede the holding of a free and fair referendum are to be suspended as deemed necessary. Following the promulgation of a general and complete amnesty for all refugees and others outside the Territory who wish to return, they will be enabled to do so by the United Nations after it has established their right to vote. The

cooperation of the two parties and of the two neighbouring countries, Algeria and Mauritania, is considered an essential condition for the implementation of the settlement plan (see S/22464, para. 55).

16. Under the settlement plan, the transitional period was to begin with the coming into effect of the ceasefire on 6 September 1991 ("D-Day"), and was to end with the proclamation of the results of the referendum, originally scheduled for January 1992. However, the transitional period has been repeatedly postponed as a result of protracted delays in the preparatory work of MINURSO, caused essentially by differences between the parties, as well as disagreements with the United Nations, over the interpretation and implementation of key provisions of the settlement plan.

17. Shortly after the establishment of MINURSO in April 1991, it became clear that, notwithstanding the parties' earlier acceptance of the settlement plan, substantial differences remained. Following two unsuccessful rounds of consultations between the United Nations and the two parties in 1991, the issue of the designation of locations for the confinement of Frente POLISARIO troops was finally settled under the Houston accords of 1997 (see S/1997/742, annexes I-III), when the two parties, as well as Algeria and Mauritania, agreed to a compromise formula put forward by my Personal Envoy (S/1997/742, annex II). However, with respect to the return of Saharan refugees and the establishment of the electorate, some major issues have remained unresolved to this day.

18. As the members of the Security Council are well aware, the establishment of the electorate was impeded throughout the 1990s by successive deadlocks over the issue of identifying those Saharans who would have the right to vote in the referendum. The Frente POLISARIO maintained at the outset that, under the settlement plan, only the 74,000 people counted in the 1974 Spanish census of the Territory should take part in the referendum. Morocco held the opposite view, namely, that thousands of additional Saharans were equally qualified to vote, including those who were in the Territory at the time of the census but had not been counted, those who had fled to Morocco in previous years and those from regions that were formerly part of the Territory but were then retroceded by Spain to Morocco in the 1950s and 1960s (and are now part of southern Morocco).

19. Against this background, Secretary-General Javier Perez de Cuéllar established, in December 1991, a set of criteria for determining eligibility to vote in the referendum (S/23299, annex), with due regard to the persons counted in the 1974 census as well as to others, whether residing inside or outside the Territory, who claim the right to vote on the grounds that they are Western Saharans and were omitted from that census. The eligibility criteria, which include family and residential links to the Territory, provoked considerable concern on the part of the Frente POLISARIO, which maintained its objection to the participation in the referendum of any persons other than those from the 1974 census list and their immediate families.

20. With a view to breaking the resulting deadlock, prolonged consultations were held by the United Nations with the two parties on the interpretation and application of the voter eligibility criteria and on a compromise proposal to that effect put forward by my predecessor in June 1993 (S/26185, annex I). The

deadlock was not broken until 1994, when both parties agreed to proceed on the basis of the compromise proposal, albeit with serious reservations, in particular over provisions related to tribal links with the Territory and to documentary evidence or oral testimony in support of the applicants' claims. While Morocco was concerned that applicants who were outside the Territory during the 1974 census but who are nonetheless members of a Saharan tribe of the Territory might be arbitrarily excluded, the Frente POLISARIO was concerned that applicants foreign to the Territory might be fraudulently included in the electorate. The United Nations indicated that it would see to it not only that all potential voters were authentic Saharans, but also that they belonged to the Territory (see S/1994/283, annex II).

21. The subsequent launching of the simultaneous identification operations in Western Sahara and the Tindouf refugee camps in August 1994 constituted a significant step forward. However, this unprecedented process, already quite complex and painstaking in itself, was beset with difficulties from the outset. These ranged from adverse weather conditions and logistical problems to the recurrent unavailability of observers of the two parties and of tribal leaders (sheikhs - one from each side, as was agreed with the parties) called upon to testify at every identification session. At the same time, the parties imposed limits on the number of applicants to be identified on any given day. Both parties also insisted that if, for any reason, identification was stopped at a centre on one side, then, as a matter of reciprocity, it must also be stopped at a centre on the other side. From the start, the single greatest obstacle to identification had been the issue of tribal leaders designated to testify, over which the two parties had markedly divergent views. A formula to address this problem was eventually devised by MINURSO and accepted by both parties in early 1995 (see S/1995/240). However, the process experienced further delays and interruptions as a result of the disagreement of the Frente POLISARIO with the interpretation and implementation of some provisions of the formula and the difficulty of providing the sheikhs required for the identification of certain tribes.

22. In June 1995 a Security Council mission to the region impressed upon the parties the need to cooperate fully with MINURSO. The mission called upon the parties not to limit the number of persons to be identified on any given day and to abandon their insistence on reciprocity in the number and operation of identification centres on each side. The mission also called upon Morocco to conduct a preliminary vetting of some 100,000 applications from persons residing outside the Territory to ensure the timely completion of the identification process (see S/1995/498). However, the Moroccan authorities were unwilling to initiate a preliminary vetting on the grounds that this might deny the right of authentic Saharans to apply for participation in the referendum. The Frente POLISARIO suspended its participation in the identification process twice, protesting Morocco's position (S/1995/779, paras. 2 and 9). Despite repeated calls upon the parties by the Security Council and my predecessor to permit the process to advance more rapidly, the positions of the parties frustrated all such efforts, as both sides were reluctant to compromise on any issue that they believed would weaken their own position. By late 1995 the identification process ground to a halt when the Frente POLISARIO decided that it would not participate in the identification of the three tribal groupings categorized in the 1974 census as H41, H61 and J51/52 (see S/1995/779). Thus, while the early

phase of the identification operation was in itself a significant achievement, MINURSO, confronted with the multiple constraints described above, was able to interview only about 60,000 applicants between August 1994 and December 1995.

23. Upon assuming my office on 1 January 1997, I considered how best to put the peace process in Western Sahara back on track. In that spirit, I appointed Mr. Baker, a former Secretary of State of the United States of America, as my Personal Envoy for Western Sahara to reassess the feasibility of implementing the settlement plan (S/1997/166). Following his exploratory mission to the region in April 1997 to assess the situation, my Personal Envoy informed me that neither party had indicated any willingness to pursue any political solution other than implementing the settlement plan. He believed that the only realistic way to assess the feasibility of implementing the plan would be by arranging direct talks between the parties (see S/1997/358).

24. During the ensuing four rounds of direct talks under the auspices of my Personal Envoy, agreement was reached by the parties on issues related to the identification process, among others (see S/1997/742, annexes I-III). These included a compromise formula for identifying individual applicants from among some 65,000 members of tribal groupings H41, H61 and J51/52 whose links with the Territory were contested by the Frente POLISARIO, as well as a set of practical measures for the resumption of the identification process. Under that compromise formula, the parties agreed that they would not directly or indirectly sponsor for identification applicants from those three tribal groupings other than those included in the 1974 census and their immediate family members, nor would the parties actively prevent individuals from such tribal groupings from presenting themselves. Agreement was also reached on a code of conduct to be observed during the referendum campaign, on a declaration by the parties relating to the authority of the United Nations during the transitional period and on a compromise formula for the confinement of Frente POLISARIO troops. The parties further reaffirmed their commitment to the provisions of the United Nations settlement plan for the return of refugees, as well as the release of prisoners of war and Saharan political detainees.

25. The Houston accords paved the way for the resumption of the identification process in December 1997. The resumption proceeded well and, unlike in the previous phase, operational problems were for the most part easily resolved. However, tensions between the parties soon arose again, and the process was mired by interruptions provoked by representatives of the two parties over perceived slights and accusations. Additional difficulties appeared when applicants belonging to the "contested" H41, H61 and J51/52 tribal groupings started presenting themselves for identification in large numbers.

26. While MINURSO eventually succeeded in interviewing more than 147,000 "uncontested" applicants by September 1998, their identification could not be completed as quickly as it should have, owing in particular to Morocco's insistence that the 65,000 applicants from tribal groupings H41, H61 and J51/52 be treated on an equal basis with those from any other Saharan tribe. Thus, the Moroccan authorities maintained that all 65,000 applicants had the right to be identified, while the Frente POLISARIO remained opposed to the identification of any applicants from those groupings other than those listed in the 1974 census and their immediate families.

27. Since the deadlock over the identification process was due primarily to the parties' inability to reach a compromise on the issue of tribal groupings H41, H61 and J51/52, I decided to propose a solution in order to move the process forward. To that effect, a United Nations package of measures was presented to the parties in October 1998, including protocols for the identification of individual applicants from the three groupings and, as a way of speeding up the process, the concurrent initiation of the appeals process for applicants identified between 1994 and 1998. A UNHCR draft protocol containing detailed provisions for the repatriation of Saharan refugees was submitted to the two parties and to Algeria and Mauritania in November 1998.

28. During my subsequent visit to the region in late 1998, the Frente POLISARIO formally accepted the proposed package, whereas the Moroccan authorities expressed their particular concern over the simultaneous implementation of the appeal and identification procedures. Following prolonged consultations between the parties and MINURSO as well as the Secretariat, a set of operational directives for the implementation of the identification and appeal procedures was developed, addressing some of the parties' concerns (S/1999/483/Add.1). Finally, in April and May 1999 the parties formally accepted the protocols and operational directives, albeit with reservations and misgivings for opposite reasons (S/1999/554 and S/1999/555). With the issuance of the first part of the provisional voter list, the appeal process was eventually launched, on 15 July 1999, six months after the time envisaged in the United Nations package of measures and 10 months after the conclusion of the identification of applicants from tribes other than the H41, H61 and J51/52 tribal groupings.

29. The completed pre-registration exercise for the repatriation of Saharan refugees points to serious problems ahead with regard to the possible places of return (see sect. E above). In addition, the two parties have yet to facilitate, in practical terms, the implementation of the cross-border confidence-building measures proposed by UNHCR in June 1999. Nor can the UNHCR draft repatriation protocol be concluded with the four parties to the protocol any time soon, given some fundamental differences over its main provisions.

IV. FINANCIAL ASPECTS

30. As indicated in my previous report to the Security Council (S/1999/1219, paras. 24 and 25), the General Assembly, by its resolution 53/18 B of 8 June 1999, appropriated the amount of $52.1 million, equivalent to a monthly rate of some $4.3 million, for the maintenance of MINURSO for the period from 1 July 1999 to 30 June 2000. I also obtained authorization from the Advisory Committee on Administrative and Budgetary Questions to enter into commitments in an amount of $5.1 million to incur additional expenditure associated with the simultaneous conduct of the identification and appeal process. Therefore, should the Council approve my recommendation contained in paragraph 37 below with regard to the extension of the mandate of MINURSO, the cost of maintaining the Mission will be within the monthly rate approved by the General Assembly and the commitment authority granted by the Advisory Committee.

31. The total resources provided by the General Assembly for MINURSO since its inception amount to $437.9 million, inclusive of the appropriation for the

current financial period. As at 31 January 2000, unpaid assessed contributions to the MINURSO special account amounted to $71.8 million. The total outstanding assessed contributions for all peacekeeping operations at that date amounted to $2,138.5 million.

V. OBSERVATIONS AND RECOMMENDATIONS

32. Almost nine years have elapsed since the establishment of MINURSO with the aim of holding a referendum of self-determination in Western Sahara. Yet, in spite of the considerable efforts exerted by MINURSO under successive Special Representatives, it has not been possible during this period to implement in full any of the main provisions of the United Nations settlement plan, with the exception of the monitoring of the ceasefire, in effect since 6 September 1991. As recalled in the present report, the implementation of the plan, including the start of the transitional period, has been impeded by fundamental differences between the parties over the interpretation of its main provisions. Of these, the issue of the establishment of the electorate has been, and may remain, a core problem which could eventually prevent the holding of the referendum as provided by the plan.

33. Judging from the difficulties and delays encountered by MINURSO in the identification process from the outset, including the establishment of the criteria for voter eligibility, the two parties seem to share the belief that the composition of the electoral body will predetermine the outcome of the referendum. At different times, therefore, one or the other party has withheld cooperation with the MINURSO identification procedures, in the belief that they might eventually favourably skew the composition of the electorate. In fact, throughout the identification process, the cooperation of one or the other party with MINURSO has been predicated upon its perception of how the results might be favouring the other side.

34. The same underlying concerns are likely to pervade the appeal process as well. With already 79,000 appeals from the first part of the provisional voter list, MINURSO faces the prospect of receiving as many as 60,000 additional appeals from the second part of the list by the deadline of 25 February 2000. The respective positions of the two parties do not augur well for an early resolution of the issue of admissibility of appeals for hearings. Under these circumstances, the timetable envisaged is no longer valid, as indicated in my previous report, and the date for the referendum, which has been repeatedly postponed since 1991, can still not be set with certainty at this juncture.

35. Apart from the hearing of all appeals, which could take a long time, other questions will still need to be settled with the parties before a referendum can be held. These include such complex and sensitive issues as a protocol for the repatriation of Saharan refugees acceptable to all parties concerned, and agreement on what would constitute appropriate security conditions for voting in the Territory. As described in the present report, experience has shown that each time the United Nations has proposed a technical solution to bridge the parties' differing interpretation of a given provision of the settlement plan, a new difficulty, requiring yet another round of protracted consultations, arises.

36. The developments during the past nine years, and particularly over the last months, constitute a real source of concern and raise doubts about the possibility of achieving a smooth and consensual implementation of the settlement plan and agreements adopted by the parties - despite the support given by the international community. Furthermore, even assuming that a referendum were held pursuant to the settlement plan and agreements of the parties, if the result were not to be recognized and accepted by one party, it is worth noting that no enforcement mechanism is envisioned by the settlement plan, nor is one likely to be proposed, calling for the use of military means to effect enforcement.

37. With this sobering assessment, it would be wise to review the situation. I therefore intend to ask my Personal Envoy, James A. Baker III, to consult with the parties and, taking into account existing and potential obstacles, to explore ways and means to achieve an early, durable and agreed resolution of their dispute, which would define their respective rights and obligations in Western Sahara. To give adequate time for these consultations, I recommend that the Security Council extend the mandate of MINURSO for a period of three months, until 31 May 2000.

Annex

United Nations Mission for the Referendum in Western Sahara: contributions as at 17 February 2000

	Military observers	Troops	Civilian police observers	Total
Argentina	1	-	-	1
Austria	4	-	-	4
Bangladesh	6	-	-	6
China	16	-	-	16
Egypt	19	-	1	20
El Salvador	2	-	-	2
France	25	-	-	25
Ghana	6	7	10	23
Greece	1	-	-	1
Guinea	3	-	-	3
Honduras	12	-	-	12
Hungary	-	-	4	4
Ireland	7	-	-	7
India	-	-	11	11
Italy	5	-	-	5
Kenya	8	-	-	8
Malaysia	13	-	10	23
Nigeria	5	-	10	15
Norway	-	-	2	2
Pakistan	6	-	9	15
Poland	3	-	-	3
Portugal	5	-	9	14
Republic of Korea	-	20	-	20
Russian Federation	25	-	-	25
Senegal	-	-	5	5
Sweden	-	-	10	10
Uruguay	13	-	-	13
United States of America	* 15	-	-	15
Venezuela	3	-	-	3
Total	203*	27*	81	311

* In addition to the Force Commander (Belgium).

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